

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Interim Suspension Order  
Against:**

**MAURICE BUCHBINDER, M.D.**

**Physician's and Surgeon's Certificate No. A 38176,**

**Respondent**

**Case No. 800-2019-059319**

**OAH No. 2021080912**

**DECISION AND ORDER ON PETITION FOR INTERIM SUSPENSION  
ORDER FOLLOWING NOTICED HEARING**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video/telephonic means on September 22, 2021, from San Diego, California, due to the COVID-19 pandemic.

Karolyn M. Westfall, Deputy Attorney General, represented petitioner William Prasifka, Executive Director of the Medical Board of California (board).

David Rosenberg, Attorney at Law, Rosenberg, Shpall & Zeigen, APLC represented Maurice Buchbinder, M.D., respondent.

Documentary evidence was received, the record was closed, and the matter submitted for decision on September 22, 2021.

## **SUMMARY**

Based on the evidence submitted at the noticed hearing on the petition, it is concluded that respondent suffers from a cognitive impairment due to a stroke he suffered in 2019 that renders him unable to practice medicine safely. Respondent further failed to comply with the board's order requiring him to attend a neuropsychological examination. Respondent's license is suspended pending a hearing, final decision by the board, or other order on the charges and allegations in an accusation to be filed against him in accordance with the requirements of Government Code section 11529, subdivision (f).

## **FACTUAL FINDINGS**

### **License History, Background and Jurisdiction**

1. The board issued to respondent Physician's and Surgeon's Certificate No. A 38176 on March 22, 1982, which is currently in full force and effect. Unless renewed, it will expire on June 30, 2023.

2. On August 30, 2021, petitioner served and filed the Petition for Interim Order of Suspension, a Notice of Hearing, a Memorandum of Points and Authorities in

Support of the Petition, and Exhibits pre-marked 1 through 5.<sup>1</sup> On September 1, 2021, petitioner served and filed an Amended Notice of Petition for Interim Suspension Order. The petition alleges that respondent suffers from cognitive and neurological deficits due to a stroke he suffered in 2019 that renders him unable to safely practice medicine, and that he failed to comply with the board's Order Granting Petition to Compel Neuropsychological and Physical Examinations of Respondent issued pursuant to Business and Professions Code section 820 (820 Order).

3. The board initiated its investigation of respondent after it received a complaint that respondent suffered a stroke on September 6, 2019. The board referred the case to the Division of Investigations, Health Quality Investigation Unit (HQIU). The investigation was initially assigned to Investigator Angela McLean. It was later reassigned to Investigator Lisette Martinez.

4. The investigators obtained records and conducted interviews with respondent's treating neurologist, respondent, and other persons familiar with respondent.

### **Relevant Evidence Submitted by the Parties**

5. Petitioner asserts that the petition, supporting exhibits, and declarations meet the criteria for issuance of the interim order pursuant to Government Code

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<sup>1</sup> At the start of the hearing the sequencing of the parties' exhibits was changed to better identify jurisdictional documents and the parties' memoranda of points and authorities. On complainant's motion, at the start of the hearing, a protective order was issued for Exhibits 6B, 7A and B, and 8A.

section 11529. Petitioner asks that respondent's license be suspended pending a decision on the merits.

Respondent argues that he can safely practice medicine, he practices interventional cardiology and limits his practice only to assisting another interventional cardiologist at Paradise Valley Hospital without full privileges, and he remains willing to comply with the board's 820 order.

6. Petitioner submitted the following materials into evidence:

EXHIBIT 5: Certificate of Licensure;

EXHIBIT 6: Declaration of Walter Strauser, M.D. with Attachments A (Curriculum Vitae), and B (Report dated February 8, 2021);

EXHIBIT 7: Declaration of Investigator Angela McLean with Attachments A (medical records from University of California San Francisco Medical Center), and B (Portions of Medical Records from Scripps Memorial Hospital La Jolla);

EXHIBIT 8: Declaration of Investigator Lisette Martinez with Attachments A (Expert Report from Jeremy Hogan M.D. dated January 11, 2021), B (Letter to Respondent and Mr. Rosenberg), and C (Paradise Valley Hospital Privileging Document);

EXHIBIT 9: Board's Business and Professions Code section 820 Order dated October 14, 2020.

7. Respondent submitted the following materials into evidence:

EXHIBIT 1 (R): Respondent's Declaration with attached EXHIBITS A (respondent's curriculum vitae), EXHIBIT B (Letter from Paradise Valley Hospital dated January 14, 2020), EXHIBIT C (letter report from Gregory Whitman M.D. dated October 8, 2020);

EXHIBIT 2 (R): Declarations of Athar Ansari, M.D., Deena Schlaffer, Diane Koester Wilkerson, R.N., Garrett Hartsuyer, Ira Frazer, Lanny H. Cornell, D.V.M., Laura Salas, Martha Alvarez, C.M.A., and Yuan Lin, M.D.;

EXHIBIT 3 (R): Respondent's Supplemental Declaration dated September 21, 2021, with attached EXHIBITS D and E.

8. The following findings are derived from the above-referenced exhibits received into evidence:

**RESPONDENT'S 2019 STROKE RECOVERY AND CURRENT PRACTICE OF  
CARDIOLOGY**

9. Respondent is a respected and well-regarded interventional cardiologist who has had a distinguished career practicing medicine for 44 years. He is currently the president of San Diego Cardiovascular Associates (SDCVA). As an indication of the regard his colleagues and peers have for him, in 2021 participating doctors of the San Diego Medical Society found him to be a "Physician of Exceptional Excellence," and he was identified as among San Diego County's best doctors in San Diego Magazine.

10. On March 23, 2019, respondent suffered a stroke while at work. In the morning that day he began experiencing difficulty speaking, and after driving himself home, his speech issues continued. Respondent went to the hospital that evening and was admitted into the intensive care unit where he stayed for five days. Numerous tests confirmed he had suffered a left hemispheric cerebral infarct.

11. Over the next couple of months, respondent improved neurologically, but he continued to suffer significant impairment, most notably in his speech. He was subsequently diagnosed with aphasia and apraxia. Between April 2019 and November 2020 respondent received regular speech language therapy. After approximately 133 sessions, respondent continued to demonstrate mild deficits with both verbal communication and sometimes with comprehension.

12. In July 2019, respondent returned to work in a clinical setting. At first, he did not resume working as an interventional cardiologist. However, in the past year, according to his declaration, respondent resumed working as an interventional cardiologist at Paradise Valley Hospital assisting another cardiologist in interventional cardiology procedures. Since January 14, 2020, he has had courtesy privileges at this hospital. This means he does not have admitting privileges and can only assist another cardiologist, Athar Ansari M.D., in the catheter lab. If he were to return to active medical staff, he would have to be proctored in five cases before full privileges would be granted.

13. Since respondent returned to the practice of interventional cardiology he has assisted in approximately 120 angiograms and placed and threaded the catheter on about 90 percent of the patients. Of these about half needed interventional care such as placement of the stent. As the second physician, he assisted in the placement of the stent in 80 percent of the patients. He said there were no complications.

#### **THE HQUI INVESTIGATION, BOARD'S 820 ORDER, AND DRS. STRAUSER'S AND HOGAN'S EVALUATIONS AND REPORTS**

14. On February 5, 2020, Investigator McLean met with respondent at his office. He agreed to sign authorizations for release of his medical information, but

informed Investigator McLean that he would not voluntarily submit to physical or mental evaluations.

15. On March 4, 2020, Investigator McLean spoke with S. Andrew Josephson, M.D.,<sup>2</sup> a neurologist who was treating respondent at the University of California San Francisco (UCSF) since his stroke. Dr. Josephson told Investigator McLean that he was not comfortable declaring that respondent was safe to practice medicine because he does not know what procedures respondent performs in his practice of cardiology. He told Investigator McLean that he believes a neuropsychological exam would be needed to evaluate respondent's ability to practice safely.

16. On October 14, 2020, the board issued the 820 Order. The board in this order required respondent to submit within 30 days to a neuropsychological examination to be performed by physician and surgeon and/or psychologist(s) designated by the board to determine whether respondent's ability to safely practice medicine is impaired due to a physical or mental illness. Respondent has failed to comply with the requirement in the order that he submit to a neuropsychological examination. He complied with the order to submit to physical and mental exams as detailed below.

17. On November 25, 2020, respondent submitted to a mental evaluation by board appointed psychiatrist, Walter W. Strauser, M.D. Dr. Strauser is board-certified in psychiatry and also in physical medicine and rehabilitation. He is a Diplomate of the

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<sup>2</sup> Investigator McLean referred to Dr. Josephson by his initials while elsewhere in the record his name is referenced.

National Board of Medical Examiners and since 1994 has been a qualified medical examiner for the State of California in psychiatry, physical medicine, and rehabilitation.

During this 82-minute evaluation, respondent informed Dr. Strauser that he believes he has improved 80 percent since his stroke in 2019, and he feels ready to resume work as an interventional cardiologist.

18. After conducting a review of materials and a mental status examination, Dr. Strauser opined in a report and a declaration that respondent suffers from sequelae of cerebral infarction with speech, language, and cognitive deficits, he is not safe to practice interventional cardiology due to his cognitive impairment and visuospatial deficits, and that his continued practice would endanger the public health, safety, and welfare. Dr. Strauser recommended that respondent undergo comprehensive neuropsychological testing to further delineate the nature and extent of his cognitive challenges. As to his ability to treat outpatient cardiology patients, Dr. Strauser recommended a practice monitor to ensure respondent is safe to practice in that capacity.

19. In reaching his conclusion based on his interview with respondent and the materials he reviewed, Dr. Strauser opined that respondent has a mild neurocognitive disorder due to his stroke in March 2019, which causes him to have significant speech and language impairment, and some visuospatial and cognitive problems.

20. Specifically, Dr. Strauser found respondent to have:

significant speech and language problems that clearly impact his ability to communicate with patients...significant problems with expressive language particularly with word

finding difficulty, word substitution errors, and impaired fluency...reading was significantly impaired as was writing...significant impairment in his visuospatial ability, which more likely than not precludes his doing any cardiac procedures....and impaired attention, memory, and executive functions.

21. Dr. Strauser found further the following:

During my mental status examination, I noted Respondent's expressive language, writing, attention, abstraction, and memory were significantly impaired. His reading was also significantly impaired. Respondent struggled to read a simple paragraph, going very slowly and making frequent paraphasic errors. After I read a paragraph aloud and queried him about the details, it was clear to me that he had difficulty comprehending what I read to him as well. I also noted Respondent's visuospatial ability was significantly impaired. He struggled to draw the face of a clock and to copy two interlocking pentagons. On the Color Trails Test, which measures a person's capacity for sustained visual attention, sequencing, visual spanning, hand-eye coordination, and mental flexibility, he performed in less than the 1st percentile for his age and educational level.

## **DR. HOGAN'S REPORT**

22. Respondent also submitted to a physical examination with Jeremy L. Hogan, M.D. Dr. Hogan is Chief of the Neurology at Sharp Rees-Stealy Medical Group and a Diplomate of the American Board of Psychiatry & Neurology. Dr. Hogan reviewed respondent's medical records including records from 2019 and from Dr. Josephson, the investigation report, and board's 820 Order, and he prepared a letter report.

23. Based on his review of the medical records and his examination of respondent, Dr. Hogan concluded that respondent had a very mild expressive aphasia, mild aphasia, and had difficulty repeating phrases, which he states is very typical of Broca's aphasia. In his opinion respondent's mild aphasia does not impact his ability to practice medicine safely, and he further concluded that no restrictions are warranted on his ability to practice medicine. Dr. Hogan added that because respondent's presentation is not due to mental illness a mental examination is not necessary.

## **REPORT FROM GREGORY WHITMAN M.D.**

24. In support of his opposition to the petition respondent submitted a letter report dated October 8, 2020, from Gregory T. Whitman, M.D. Dr. Whitman is board certified in neurology by the American Board of Psychiatry & Neurology. At respondent's former attorney's request Dr. Whitman examined respondent for one-and-a-quarter hours on October 1, 2020, and prepared the letter report. Dr. Whitman reviewed records from Dr. Josephson, and a status post event medical examination report dated March 23, 2019, by Norman Lepor, M.D.

Dr. Whitman concluded the following based on his evaluation and review of these materials, and his interview with respondent: Respondent experienced a stroke

that caused him to have mild expressive aphasia for which he continues to have speech therapy; from a neurology perspective respondent has recovered well, and apart from expressive aphasia, he is doing well neurologically. He opined that "It is reasonable to me as a non-cardiologist that he will continue to have a lot to offer in various roles related to Cardiology."

25. Dr. Whitman's ultimate conclusion that respondent has a lot to offer in various roles related to cardiology is vague. By this opinion, Dr. Whitman doesn't say very much one way or another regarding respondent's ability to practice interventional cardiology safely.

#### **EVIDENCE REGARDING RESPONDENT'S REFUSAL TO COMPLY WITH 820 ORDER FOR THE NEUROPSYCHOLOGICAL EVALUATION**

26. Investigator Martinez spoke with respondent's former attorney to schedule the neuropsychological examination on or about February 8, 2021. She contacted this attorney again on or about February 24, 2021, March 4, 2021, and March 5, 2021, in an attempt to schedule the examination.

27. On or about March 5, 2021, Investigator Martinez received a letter of representation from respondent's new attorney, Mr. Rosenberg. On that same date, Investigator Martinez spoke with Mr. Rosenberg to schedule the examination. Mr. Rosenberg informed Investigator Martinez that he would speak with respondent and confirm an available date.

28. On March 15, 2021, Mr. Rosenberg informed Investigator Martinez that respondent would be out of the country for the month of April and requested an appointment in May 2021.

29. On March 17, 2021, Investigator Martinez informed Mr. Rosenberg that the neuropsychological examination had been scheduled for May 21, 2021. Investigator Martinez subsequently mailed a letter to Mr. Rosenberg confirming the scheduled neuropsychological examination appointment with Christine Baser, Ph.D. (Exhibit 4, 4B.)

30. On May 19, 2021, Mr. Rosenberg informed Investigator Martinez that respondent would not be attending the scheduled examination with Dr. Baser. Investigator Martinez reminded Mr. Rosenberg that the examination was part of the board's Order.

31. On May 21, 2021, respondent failed to appear for his scheduled neuropsychological examination with Dr. Baser. On that same date, Mr. Rosenberg informed Investigator Martinez that he spoke with respondent's attorney about the requirement in the Order. He told Investigator Martinez that respondent did not intend to attend the examination.

32. In his declaration dated September 2021 (the exact date is left blank) respondent stated that he wants the exam postponed for at least 180 days or until such time as he requests Active Medical Staff Privileges at any hospital. At any rate respondent dismissed the value of even taking the exam. He concluded that the neuropsychological exam "will not properly assess my ability to practice Interventional Cardiology," noting he does not have privileges at any hospital in California to practice interventional procedures. His statement here is incorrect. Respondent doesn't have full privileges at Paradise Valley but he has courtesy privileges at the hospital and can conduct interventional procedures as a second physician to Dr. Ansari.

## **DECLARATIONS SUBMITTED BY RESPONDENT**

33. As noted above respondent submitted a number of declarations in support of his opposition to the petition from persons who know respondent as patients and have worked with him. The statements from these individuals are summarized as follows:

34. Dr. Ansari stated in his September 10, 2021, declaration that he has known respondent since 1993 when he was a fellow in training at Cedars Sinai and over the years has worked with respondent. He regards respondent as one of the most skilled and competent cardiologists he has met. After respondent returned from his illness Dr. Ansari has worked with respondent over the last year and he has "routinely" and on a "weekly basis" observed him. He has observed respondent with 125 cases over the last year. Dr. Ansari said that respondent has made an "incredible come back" and respondent's thought process, analysis, and technical skill are excellent. Dr. Ansari also stated that respondent carries conversations easily and appropriately.

35. Laura Salas has served as SDVCA's Practice Manager since 2001. In this capacity she conducts all human resources functions.

Ms. Salas in her September 2021 declaration (the specific day in September is not provided) stated that when respondent returned from medical leave, he had difficulty with words and expressing his immediate thoughts. Ms. Salas said that after a momentary struggle respondent was able to communicate effectively. She said she only observed that he had difficulty saying words and did not observe indications of memory problems. Ms. Salas said that respondent's speech has improved a great deal since he attended speech therapy. Ms. Salas added that she has received no complaints about respondent from patients or office staff.

36. Diane Kolster Wilkerson, R.N. has worked with respondent since 1994 and works at both SDCVA and as a research coordinator at the Foundation for CardioVascular Medicine and Research. Ms. Wilkerson has not observed any difference in respondent's patient care since he returned from medical leave and respondent has no problems communicating.

But Ms. Wilkerson stated in her September 13, 2021, declaration, the following, which calls into question the value of her understanding of respondent's capacity and present work as a cardiologist: "[N]ow since he is not performing any hospital procedures I have noticed that he spends more time with patients and is even more thorough in reviewing treatments and options with patients. As such his patient care is arguably even better than before his medical leave." Because Ms. Wilkerson as a nurse at SDVCA did not know that respondent has been performing procedures, Ms. Wilkerson's statement that she noticed no difference in his capacity is discounted.

37. Martha Alvarez has worked as Certified Medical Assistant and Office Manager at SDCVA since 2010. In her September 15, 2021, declaration she stated she is the main point of contact between patients and respondent and Ms. Wilkerson. She divides her time between SDCVA and a research foundation where respondent works. She took a year off work and was not at either SDVCA or the foundation when respondent went on medical leave. When she returned to SDCVA and the foundation she didn't notice any difference in respondent's ability to communicate or in his clinical judgment. She believes respondent is an excellent doctor, and she would not hesitate to refer family or friends to him.

38. Yuan Lin, M.D. stated in his September 15, 2021, declaration that he has worked with respondent over the last 15 years and is currently Chief Cardiac Surgeon at TriCity Medical Center and Palomar Medical Center. In the past year he has spoken

with respondent one to two times a month and has not noticed any communication or memory issues. Respondent's thought processes and reasoning show him that respondent understands the medical issues at hand. He is not concerned about respondent's abilities as a doctor. Dr. Lin regards respondent as one of the best cardiologists in San Diego, and he said he is well respected over the world.

39. Deena Schlaffer has been respondent's patient for 20 years. In her declaration dated September 8, 2021, she said that respondent is an extremely thorough, compassionate and sincere, and he cares about his patients. She said that she has not noticed any differences in his disposition, personality, memory, and speech since he returned from medical leave.

40. Garrett Hartsuyker has been respondent's patient since 2011. He stated in a declaration dated September 7, 2021, that he regards respondent as an excellent doctor, and he did not observe respondent had any communication issues when respondent returned from medical leave.

41. Ira Frazer is a licensed California attorney. In a declaration dated September 8, 2021, Mr. Frazer said that he has been respondent's patient since 2005, and he didn't notice any difference in respondent's ability to communicate after respondent returned from medical leave. He regards respondent as an excellent doctor.

42. Lanny H. Cornell, D.V.M. has seen respondent as patient since 2007. In his declaration dated September 7, 2021, Dr. Cornell has also not noticed any differences in respondent's ability to communicate or in his memory since respondent returned from medical leave.

## **Parties' Arguments**

43. Petitioner argued at the hearing that the preponderance of the evidence has shown that issuance of the interim suspension order is necessary based on his conclusion that respondent cannot now safely practice interventional cardiology. Petitioner stressed that respondent's treating neurologist would not certify he was safe to practice interventional cardiology, and he recommended that respondent undergo a neuropsychological examination.

In addition, respondent's refusal to attend the neuropsychological examination, which both Dr. Strauser and respondent's treating neurologist recommended, per the board's order has subjected his license to discipline and warrants the immediate suspension of his license. Respondent does not get to pick and choose when he can take the evaluation, and the board is not required to wait for respondent. It is mandatory that he attend this examination. He simply did not attend.

44. Respondent argued that the totality of the circumstances and the statements of nine persons in their declarations show that respondent can safely practice cardiology. Respondent noted that he had his stroke in 2019, and he has seen 100 patients, harmed no patients and there have been no patient deaths, and no misdiagnoses after he returned from medical leave. Respondent noted that Dr. Hogan who performed the physical examination of respondent found that respondent's very mild aphasia did not affect his ability to practice medicine, and he can practice medicine safely. Respondent said that it would be incredibly harmful to him, in light of his 44 years of practice, to issue the interim suspension order. He added he remains willing to undergo the neuropsychological examination the board ordered.

## **LEGAL CONCLUSIONS**

### **Applicable Code Sections**

1. Government Code section 11529, subdivision (a), provides as follows:

The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, imposing drug testing, continuing education, supervision of procedures, limitations on the authority to prescribe, furnish, administer, or dispense controlled substances, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. The failure to comply with an order issued pursuant to Section 820 of the Business and Professions Code may constitute grounds to issue an interim suspension order under this section.

2. Government Code section 11529, subdivision (e), provides that the administrative law judge shall grant the interim order where, in the exercise of

discretion, the judge concludes that: "(1) There is a reasonable probability that the petitioner will prevail in the underlying action," and "(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order."

3. Business and Professions Code section 820 provides as follows:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

4. Business and Professions Code section 821 provides as follows:

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

5. Business and Professions Code section 822 authorizes the board to revoke or suspend respondent's Physician's and Surgeon's certificate, or place him on probation, if it determines that respondent's "ability to practice his . . . profession safely is impaired because the licentiate is mentally ill, or physically ill affecting

competency. . . .” Subdivision (d) permits the board to take “such other action in relation to the licensee as the licensing agency in its discretion deems proper.”

### **Burden and Standard of Proof**

6. Petitioner must prove the facts necessary to establish the conditions under Government Code section 11529 by a preponderance of the evidence.

### **Evaluation and Disposition**

7. A preponderance of the evidence has established that petitioner has a reasonable probability of prevailing in an underlying action in this matter, and that the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order. Accordingly, cause exists to immediately suspend or restrict respondent’s certificate pursuant to Government Code section 11529.

8. This conclusion is reached based on Dr. Strauser’s opinion that respondent is not safe to practice interventional cardiology due to cognitive impairments and his visuospatial deficits due to the stroke he suffered in 2019, and in his opinion respondent’s continued practice of medicine would endanger the public health, safety and welfare. This conclusion is also reached because respondent refused to comply with the board’s order issued under Section 820, which required him to submit to a neuropsychological evaluation and which subjects his license to suspension or revocation under Section 821.

Dr. Strauser’s opinion that respondent cannot now practice medicine safely due to the residual effects from the stroke he suffered are credited over Dr. Hogan’s opinion that respondent is not impaired for these reasons: Contrary to Dr. Hogan’s

observations from his physical examination, Dr. Strauser found based on his examination of respondent that respondent had more than minimal residual effects from his stroke. He struggled to read a simple paragraph, read it very slowly with frequent paraphasic errors, he struggled to draw the face of a clock and to copy two interlocking pentagons. On the Color Trails Test, which measures a person's capacity for sustained visual attention, sequencing, visual spanning, hand-eye coordination, and mental flexibility, respondent performed in less than the 1st percentile for his age and educational level. His opinion is supported by respondent's treating neurologist who also recommended that respondent should undergo neuropsychological testing to identify and nature and extent of his cognitive impairment. In comparison, Dr. Hogan's opinion that respondent does not have a cognitive impairment is based only on a physical examination he conducted of respondent, not a mental status examination that measured respondent's cognitive processing of information.

9. With respect to Dr. Whitman's report based on his examination of respondent, he does not rebut Dr. Strauser's opinion that respondent is not safe to practice cardiology. While he states that from a neurology perspective respondent has recovered well from his stroke, and is doing well neurologically, he does not conclude that respondent can safely practice cardiology. He only states that respondent has a lot to offer in various roles related to cardiology.

10. Regarding respondent's refusal to comply with the board's Section 820 order, this refusal is sufficient reason standing alone to immediately suspend or restrict his license under Government Code section 11529, subdivision (a), and Business and Professions Code section 821. Under Section 821 his failure to comply with the board's order subjects his certificate to "suspension or revocation." There is no dispute that he did not comply with the board's order. His assertion at the end of this hearing that he

remains willing to undergo the testing is dismissed considering his repeated efforts to delay submitting to the examination, and his comment in his declaration that he feels the neuropsychological examination “will not properly assess my ability to practice Interventional Cardiology.”

11. In effect, to justify his refusal to comply, petitioner wants to challenge the board’s order. In his argument he dismissed the board’s order, and he argued that the “totality of the evidence” shows that respondent can safely practice medicine. This argument is rejected. The board’s order to require respondent to submit to the neuropsychological evaluation is not reviewable in this proceeding. Courts have recognized the board’s authority to order licensees to submit to ordered evaluations as an investigatory tool and have upheld the consequences for failure to comply with such an order under Section 821. (See, for discussion of due process implications of Section 821, *Fettgather v. Board of Psychology*, (2017)17 Cal.App.5th 1340, at pp. 1348-1349 (citations omitted); (“Moreover, the government’s interest would be severely impacted if licensees were permitted to delay investigations the licensee believed were unwarranted because it would unnecessarily delay the investigation and ultimate determination of mental fitness.”).)

12. Due consideration has been given to the statements from persons who have known respondent. But these persons in their statements do not contradict Dr. Strauser’s opinion that based on the examination of respondent he conducted, respondent suffers from cognitive impairments and a neuropsychological examination is required to assess the nature and extent of this impairment. Due consideration has also been given to whether the imposition of a penalty less than suspension would be appropriate. But based on this record, and because respondent refused to comply with

the board's order that he undergo neuropsychological testing, suspension of his license pending a hearing or upon further order is required.

## **ORDER**

Physician's and Surgeon's Certificate No. A 38176 issued to respondent Maurice Buchbinder, M.D., is suspended and, pending the hearing in this matter or further order or decision, respondent shall not practice medicine in the State of California.

During any period of interim suspension, starting with receipt of this Order, respondent shall surrender to the board or its agent, for safekeeping pending a final administrative order of the board in this matter, all indicia of his licensure as a physician under Business and Professions Code section 119, including his wall certificate and his wallet card, all prescription forms, all prescription drugs not legally prescribed to Respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration permits.

DATE: October 6, 2021

*Abraham M. Levy*

ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision; both parties are bound by this decision. Either party may seek judicial review pursuant to Code of Civil Procedure section 1094.5, as set forth in Government Code section 11529, subdivision (h).